



NEVADA COMMISSION ON ETHICS EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION REGARDING JUST AND SUFFICIENT CAUSE

REQUEST FOR OPINION No. 06-08

SUBJECT: MICHAEL J. FRANZOIA
MAYOR, CITY OF ELKO

A. JURISDICTION:

In his capacity as mayor of the City of Elko, Michael J. Franzoia is a public officer as defined by NRS 281.4365. As such, the Nevada Commission on Ethics has jurisdiction over this complaint.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion (complaint) 06-08, letters of correspondence submitted by Marvin Churchfield in October 2005 and January 2006 (TAB B)
- Reviewed *Waiver of Statutory Time Requirement* received March 2006 and response from Mr. Franzoia received November 2006 (TAB C)
- Reviewed the transcript of proceedings for case no. CR-2005-1248, held November 17, 2005, in Justice Court, County of Elko (TAB D)
- Reviewed the affidavit of Milt Grisham, dated October 26, 2006 (TAB E)
- Reviewed duties of City of Elko mayor

C. RECOMMENDATIONS:

Based on investigative activities, it is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481 (1)
- NRS 281.481 (2)
- NRS 281.481 (5)
- NRS 281.481 (7)
- NRS 281.481 (9)

SPECIFIC REASON:

No allegations or credible evidence of any fact exists that amounts to or supports a potential violation by this public officer of the above provisions of NRS Chapter 281.

D. SUMMARY OF REQUEST FOR OPINION:

This complaint, submitted by Marvin Churchfield, was deemed to be jurisdictional in March 2006. The complaint alleges violations of NRS 281.481(1), 281.481(2), 281.481(5), 281.481(7) and 281.481(9) by Michael J. Franzoia, mayor of the City of Elko. Mr. Franzoia is alleged to have violated the Ethics in Government law as a result of the following actions:

Mayor Franzoia used his influence as a public official when he requested that a member of the Elko County Sheriff's Posse release from custody a 19-year old male who was being held as a minor in possession of and under the influence of alcohol.

This is not the first time that Mr. Franzoia has had teenagers who have been drinking under age (possibly either his employees or friends of his daughter), released out of police custody into his personal custody to keep them from being arrested or prosecuted.

Several days after the first alleged incident, Mr. Franzoia used the same influence to have the Elko Police Department arrest Mr. Churchfield's grandson, Tyler Vavak, for "refusing to shake the mayor's hand and getting into a disagreement with the intoxicated mayor."

The mayor is using his influence whenever he can to have his friends released from police custody while having people who disagree with him arrested.

E. SUMMARY OF SUBJECT'S RESPONSE:

Mr. Franzoia submitted a *Waiver of Statutory Time Requirement* on March 24, 2006, and a written response on November 1, 2006. The following is the substance of Mr. Franzoia's response to the allegations:

Mr. Churchfield's complaint principally relates to the allegation that Mr. Franzoia used his influence as a public official to have a juvenile who was being detained by security officers released into Mr. Franzoia's custody. However, the motivation for this allegation actually stems from animosity relating to the city's dealings with Mr. Churchfield on an assortment of controversial issues relating to Mr. Churchfield's recreational vehicle park. The disagreements between Mr. Churchfield and the city resulted in Mr. Churchfield filing a lawsuit against the city. This ethics complaint was filed while Mr. Churchfield's lawsuit was still pending. Mr. Franzoia believes that this complaint should be considered in context of

the ongoing disputes and lawsuit between Mr. Churchfield and the city. The filing of this complaint was motivated by less than honorable intentions.

The event referenced in this complaint occurred on July 2, 2005, during the National Basque Festival. There is always a party at the Basque House during this annual festival. Unfortunately, it is sometimes possible for young people to obtain alcohol at this event.

Earlier that day, Mr. Franzoia had been in the dining room of his own restaurant clearing and setting tables. The white shirt he wore was stained with wine and food from working in the restaurant. Mr. Franzoia suggests that his messy appearance may have formed the basis for Mr. Churchfield's allegation that he was intoxicated, but he denies being intoxicated.

During the party, Mr. Franzoia recognized a 19-year old male who Mr. Franzoia knew through the young man's parents. Milt Grisham, a member of the Elko sheriff's posse, had the young man detained for being a minor in possession of and under the influence of alcohol. Working under the supervision of the Elko County sheriff's office, the sheriff's posse is a volunteer group that often provides security officers to these types of events. Mr. Franzoia has no authority over sheriff's posse members.

The young man had not been arrested and law enforcement had not been called, so Mr. Franzoia offered to take the young man home and make sure that his parents were aware of the situation. Mr. Franzoia's offering to do so was in no way in lieu of an arrest.

Mr. Churchfield has also alleged that Mr. Franzoia acted improperly regarding another incident that occurred the same evening at the Basque House. Mr. Churchfield's grandson, Tyler Vavak, confronted Mr. Franzoia using foul language and threatening and accusatory remarks about the lawsuit and related disputes. Several days later, Mr. Franzoia filed a complaint with the Elko Police department alleging that Mr. Vavak had threatened him. Subsequently, Mr. Vavak was arrested for disturbing the peace. The matter went to trial in Elko Justice Court. The judge admonished Mr. Vavak for his behavior but found him not guilty due to lack of evidence.

Nothing in the transcript of the court proceedings suggests that Mr. Franzoia was in any way responsible for Mr. Vavak's actions or that Mr. Franzoia acted out of vindictiveness.

Regarding matters affecting the City of Elko, as mayor, Mr. Franzoia votes his conscience. His decisions are motivated out of a desire to do what he believes is best for the city. Mr. Churchfield and his family have taken it very personally when Mr. Franzoia has refused to accede to their demands. They have berated him publicly, have become extremely loud and angry during public meetings and, during the course

of their lawsuit, unjustifiably accused Mr. Franzoia of singling them out for unfair treatment, even though he firmly believed that, in actuality, he was not allowing them to obtain the preferential treatment they wanted.

An affidavit of Milt Grisham, Elko County sheriff's posse member, was submitted with the response and states the following:

The Elko County Sheriff's Posse, among other duties, provides security for various functions under conditions approved by the Elko County sheriff. The posse is not a law enforcement unit, but on occasion, the posse or individual members may be called by the sheriff or under sheriff, to act in some law enforcement capacity. Neither the City of Elko nor its mayor has any authority over the posse.

On July 2, 2005, Mr. Grisham was performing security duties for the posse at the Basque Festival in Elko. Another posse member, Deputy Sheriff Justin Powell, caught a minor named Cody Schroeder drinking alcohol. Deputy Powell then gave custody of Mr. Schroeder to Mr. Grisham. Mr. Schroeder was handcuffed and placed in temporary detention. He was not placed under arrest and no law enforcement officials were called.

Mr. Franzoia was present at this time and asked about the status of Mr. Schroeder whom he knew. Mr. Grisham told Mr. Franzoia that he did not want to place Mr. Schroeder under arrest, but that Mr. Schroeder's parents should be informed of the circumstances. Mr. Franzoia informed Mr. Grisham that he knew Mr. Schroeder's parents, would give Mr. Schroeder a ride home and would inform Mr. Schroeder's parents of the circumstances.

Mr. Franzoia in no way used his influence as the city mayor in connection with this incident and there is no way that he could have, since he didn't have any influence or authority over Mr. Grisham. Everything Mr. Franzoia did that night was honorable and completely appropriate.

F. RELEVANT STATUTES:

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.
2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281.501.¹

(b) “Unwarranted” means without justification or adequate reason.

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5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

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7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

➤ If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

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9. A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.

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¹ As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

(a) Who is a member of his household;

(b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;

(c) Who employs him or a member of his household;

(d) With whom he has a substantial and continuing business relationship; or

(e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

G. RESULTS OF INVESTIGATION:

Allegations regarding NRS 281.481(1):

The complaint alleges that Mr. Franzoia used his influence as a public official in order to receive a favor from a member of the sheriff's posse. There is no evidence to suggest that Mr. Franzoia requested or accepted anything that would tend improperly to influence him, in his position as mayor, to depart from the faithful and impartial discharge of his public duties.

Allegations regarding NRS 281.481(2):

The complaint alleges that Mr. Franzoia used his position as mayor to secure an unwarranted advantage for an individual with whom the mayor is acquainted. The individual is not a member of Mr. Franzoia's household, has no family relationship to Mr. Franzoia, and has no employment or business relationship with Mr. Franzoia; therefore, no evidence exists to suggest that Mr. Franzoia violated NRS 281.481(2).

Allegations regarding NRS 281.481(5):

There is no evidence to suggest that Mr. Franzoia acquired information not generally available through his public duties or relationships and used that information to further the pecuniary interests of himself or any other person or business entity.

Allegations regarding NRS 281.481(7):

There is no evidence to suggest that Mr. Franzoia used governmental time, property, equipment or other facility to benefit his personal or financial interest.

Allegations regarding NRS 281.481(9):

The complaint alleges that Mr. Franzoia attempted to influence a member of the sheriff's posse. There is no evidence to suggest that Mr. Franzoia attempted to benefit his personal or financial interest through the influence of a subordinate. The mayor of Elko has no supervisory authority over a member of the Elko County sheriff's posse. In his affidavit, sheriff's posse member Milt Grisham stated that Mr. Franzoia did not use his influence as the city mayor in connection with this incident and there is no way that he could have, since he didn't have any influence or authority over the sheriff's posse or its members.

H. CONCLUSION:

The Executive Director finds that credible evidence does not exist to substantiate potential violations of NRS 281.481(1), NRS 281.481(2), NRS 281.481(5), NRS 281.481(7) and NRS 281.481(9). Accordingly, the Executive Director recommends the panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion regarding whether Mr. Franzoia violated the provisions of NRS 281.481(1), NRS 281.481(2), NRS 281.481(5), NRS 281.481(7) and NRS 281.481(9).

Prepared by: Matt C. DiOrio DATED: January 29, 2007
MATT C. DI ORIO
SENIOR INVESTIGATOR

Approved by: Pat Hearn DATED: 1/30/07
L. PATRICK HEARN
EXECUTIVE DIRECTOR